

NTER Took the Children Away

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The Intervention's role in state-based child abuse

Almost ten years after the Northern Territory Intervention was rolled out, the federal government was made aware of Aboriginal child abuse. It's not the kind of abuse that ostensibly precipitated the Intervention. It's more a symptom of the Intervention. The abuse was broadcast on the ABC's *Four Corners* in July 2016 and included images of large, stocky white men beating Aboriginal children, spraying tear gas in their faces and all over their bodies, caging them in isolated cells, and trapping their heads in hoods and their wrists and ankles in shackles. This abuse took place in youth detention.

The screening triggered the Royal Commission into the Protection and Detention of Children in the Northern Territory. The commission's focus on youth justice and child protection demonstrates the intimate relationship between the two systems that take predominantly Aboriginal children away from families and off country. However, the terms of reference do not address the colonial dynamic of this violence or the Intervention as part of this dynamic.

The commission has questioned a stream of expert witnesses from across Australia. Most witnesses have been non-Aboriginal people (e.g. youth justice officers, youth detention managers, government ministers, case workers and educators), and a substantial proportion of them are from outside the Northern Territory (e.g. health specialists and academics). To date, and as the commission winds down after almost one year, Aboriginal families have not been called to give evidence on what was and is needed for their affected children. Powerful evidence has been presented by abused children, who have spoken in open hearings and closed sessions and have provided written statements. The Northern Territory government counsel has sought to undermine the credibility of some of these vulnerable witnesses in adversarial attacks.

The commission has not sought to draw a connection between the Intervention and the treatment of Aboriginal children in institutions. On the opening day, counsel for the commission stated that some connection would be made between the Intervention and youth detention but also stated that it is 'just one example' to diagnose a tension 'between efforts being made by different parties...striving towards the same end'. This facile reference did not acknowledge the contribution of the Intervention, which was subsequently demonstrated in witness evidence, to the dramatic spike in youth detention

and the violent practices in detention centres. The cat, nonetheless, could not be kept in the bag. References to the Intervention's punitive and disempowering strategies in relation to Aboriginal communities emerge in the over 3000 pages of hearing transcripts from October 2016 to May 2017.

The elephant in the Royal Commission room: the Intervention

With the Intervention came an influx of federal and Northern Territory police into Aboriginal communities and greater law enforcement that was racially focused. Eighteen new police stations were established in Aboriginal communities under Operation Themis. Offences were exclusively applied to Aboriginal communities and town camps (which are referred to as 'alcohol protected areas' under the legislation), including the consumption, possession and supply of alcohol and the downloading of pornography and other content that exceeds 'the standards generally accepted by reasonable adults'. There was an extension of police powers in Aboriginal communities, including the power to search vehicles, houses, property and persons. Children have been caught in these policing and carceral webs, including children from remote Aboriginal communities, which has resulted in a growing portion of them being transported to detention centres that are hundreds of kilometres away from their family, community and country.

The Intervention's policies and related measures fuelled growth in youth detention and child protection rates, which has been acknowledged in hearings by Corrections management, including the former commissioner, and the former minister for Corrections and

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attorney-general. Over the ten years since the Intervention, youth detention rates have more than doubled, and they have increased almost tenfold for female youth. The increase in the number of Aboriginal children in the NT criminal justice system has surpassed the increase in all other Australian jurisdictions, and Aboriginal children constitute 97 per cent of the NT youth detention population. This has been matched by unparalleled growth rates in child protection interventions in Aboriginal families.

Despite it not being a focus of the royal commission, the Intervention elephant in the room was rapidly unleashed. On the second day of hearings, Alyawarre woman and chair of the Lowitja Institute Pat Anderson told the commission that when the federal government ‘sent in the army’ to impose the Intervention, respectful relations between government and Indigenous people were jeopardised. Aboriginal women grabbed their children and ran because it brought back memories of police and government people descending on communities to take Aboriginal children. The women’s instinct that their children would be taken proved to be correct. Aboriginal children have been removed to residential care, foster and group homes and youth detention at unprecedented rates since the Intervention.

The surveillance of school attendance and government health checks have been mechanisms for child removal from Aboriginal families and the policing of young people (for underage sex with other young people). The Northern Territory has also become the only jurisdiction where it is mandatory for everyone in the community to report suspected child mistreatment. Many notifications to child welfare are unsubstantiated, but they nonetheless trigger government encroachment on Aboriginal families and children. Most substantiations are based on perceptions of neglect, including the child’s ‘failure to thrive’ (gain weight) due to poverty. Aboriginal children taken from their immediate family are often placed outside of their community. Over one-fifth are placed in a residential institution rather than with a family.

Evidence was adduced of increasing policing and prosecuting of young people for low-order offences, such as minor property offences, traffic offences and breach of bail conditions since 2007. Witnesses pointed to the dramatic increase in the criminalisation

of youth for violating traffic regulations since 2007, such as driving while unlicensed and driving unregistered vehicles, to demonstrate the impact of the Intervention.

Seventy-five per cent of locked-up children are on remand, awaiting trial or sentencing. The surge in young people being criminalised has clogged up courts and resulted in long waiting lists for court hearings. If a child who has been on remand ends up with a conviction, his or her sentence is often backdated to the date on which they entered custody, even though they may otherwise have received a shorter sentence. In this way, young people are detained in their cells longer than their punishment requires.

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Evidence was given of over-policing of children under state care in residential and group homes. Police would be notified of incidents where children were merely ‘mucking up’. Police were called when a child ‘squirted sauce on the table’, which resulted in the child being arrested and charged with ‘malicious damage’. Olga Havnen, Western Arrernte descendant, chair of the Danila Dilba Health Service and former children’s commissioner, told the commission that the police are contacted when children in out-of-home care break a glass, which results in their ending up in the justice system. She stated, ‘I have known of cases where children have not been in contact with the justice system until such time that they were removed from families and put into the care and protection of the department’.

The Royal Commission’s interim report, handed down in April 2017, described child protection as a ‘pathway’ to youth detention. The role of Territory Families, the department responsible for child welfare, has been focused on child removals (rather than family support), which breaks children’s connection to home, community and country and puts them on the radar of the criminal justice system. One witness, prisons consultant Keith Hamburger, referred to the increase in child protection as a ‘ticking time bomb’ that will lead to an explosion in detention rates due to the trauma caused by removal from family. Havnen explained that ‘the primary desire’ of children is to ‘go back to family and to establish those connections and relationships’.

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government to seamlessly transfer case work in foster and residential care to the same children who enter the youth justice system. The conveyor belt often progresses from juvenile justice to adult imprisonment. Physically, youth detention centres in Darwin and Alice Springs have been placed adjacent to adult prisons so that they appear as an 'adjunct' to one another. More recently, youth detention centres have been relocated to 'derelict' adult prisons, such as Berrimah in Darwin, which was described by the CEO for Corrections as 'only fit for a bulldozer'. Hamburger attributed the relocation to the 'deluge' in youth imprisonment since the Intervention. This has created a control and discipline approach to managing youth in detention that has failed to give dignity to their humanity and childhood.

Torture of Aboriginal children in Northern Territory detention

The Intervention has not only increased the quantity of young people in detention but also contributed to the 'moral decay' in the treatment of children in institutions. Although the detail from the Royal Commission to date has focused on the cruelty in youth detention, there has been emerging evidence of such violence in child protection. The commission heard that young people in youth detention were punished through denial of such things as food and water, phone calls from family, hearing aids, toilet paper, clothes, mattresses, education; through transfers to adult prisons; and through segregation for indefinite periods. This could be combined with the direct use of force, including beating children, stomping on their heads, using hoods and shackles, including on mechanical restraint chairs, and spraying tear gas.

The punishment went beyond the prison placement ordered by the court. Youth detainee Dylan Voller said in the hearings:

One of the biggest problems we face is the fact that we are being further punished while in prison. Being sentenced by the judge to do the time

for our crime is our punishment, not the continued mental and physical abuse that we continue to cop while here.

The punishment was characterised by its arbitrary nature. This is clear not only from the testimony of countless witnesses but also in the official booklet given to children when they enter detention. It states:

Different officers have different approaches and as a detainee you will need to learn the different ways that officers deal with situations. This will help you predict what will happen to you if you behave poorly.

The treatment of children is illustrated in the evidence of Aboriginal boys AD and Dylan Voller, and Aboriginal girl AN. The common themes of their stories were: violence and humiliation endured at the hands of officers, segregation for extensive periods of time, restricted contact with family and an absence of support through programs or trauma-informed strategies.

The treatment that AD experienced was likened to that of a 'caged animal' or 'dog'. He was first sent to Don Dale at

fourteen years of age. Even before arriving he feared this centre because he had heard stories of Aboriginal children being bashed and raped. Don Dale lived up to these terrifying expectations. He was indefinitely placed in an isolation cell, which is part of the Behavioural Management Unit (BMU), for twenty-three hours per day, which lasted for seventeen days until he escaped. The cells were dark and dirty and smelt of sewage. There was no running water, air conditioning, fans or airflow to help the children cope with the tropical temperatures.

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When AD attempted to escape he was shocked to discover that his door was unlocked, and he walked straight out of his cell. Soon afterwards, the riot squad descended on the detention centre. They were wearing gas masks, carrying shields and batons and accompanied by an Alsatian dog. Despite AD offering to talk ‘things out’, and saying ‘I give up’, he was told ‘it was too late’. At this time, an officer shouted, ‘I’ll pulverise the little fucker’. The riot squad sprayed tear gas on AD and five other children in segregation, including two who were sitting down and playing cards. AD told the commission that the gas was ‘burning my eyes and throat’. Dylan Voller, who had separately been tear gassed, described its effect:

I thought I was going to die. My heart was racing because of the tear gas. My eyes were burning. I couldn’t hardly see properly... My heart was racing because I didn’t know what was going to happen next.

After the tear gassing, the riot squad shackled the children’s ankles and wrists and placed spit hoods on them. They were taken to the maximum-security unit of the adult prison. AD gave evidence that, ‘The guards told me if I do anything, they will slam me to the ground’. When AD was eventually released from detention, he went on to reconnect with his parents, from whom he was removed at a young age, spend time on country, continue his high-school education (he is currently in Year 11) and play as halfback on a football team. But he remains saddened by the fact that no one has ever apologised for how he was treated in detention, including since the commission began.

The experience of Dylan Voller, who was sent to youth detention in Alice Springs at the age of eleven for breaking a window at home, was characterised by his being arbitrarily hit by officers (leading to their criminal prosecution but not conviction), forcibly stripped naked and pushed to the ground, and refused access to the toilet, toilet paper, food and water. He explained the vindictive

response of officers to his requests for water: they would throw the water at Dylan’s feet and say, ‘There you go’. There were ‘plenty of times’, Dylan said, when children were refused the bathroom and made to defecate in their pillow slip or urinate out the window. Some nights Dylan was denied his clothes, sheets and mattress while the guards turned the air conditioning on full blast and left him freezing and crying for help. He said, ‘My skin was all going wrinkly and I was shivering’.

Dylan gave a detailed account of his torturous experience in the mechanical restraint chair where he was covered with a spit hood for over two hours. For Dylan, along with the tear gassing, this was the ‘most scariest’ thing that happened to him. Dylan experienced panic attacks and explained, ‘My body just shut down’. He was telling the officers that the shackles are too tight ‘around my wrist’, the hood strap was hurting his neck, and that he needed to go to the toilet, which resulted in him urinating on the chair. The officers did not alleviate his pain but instead tormented him. He said that there was ‘no responsible person there’ to draw the line when his pain became too great: ‘I was defenceless at that time. Felt like there was nothing I could do... I was telling them the whole time that it was hurting... They didn’t care’.

The shame Dylan endured was not only in highly violent episodes but also in everyday activities such as taking a shower and going to the toilet. He told the commission it was ‘scary’ having an officer ‘watching you going to the toilet or when you are having a shower’. He was strip-searched every time he had visitors, went to court or to the medical centre, was sent to an isolation cell or was at risk of self-harming. He found it humiliating that he was not allowed to cover his ‘private parts’. At one stage, the officers would conduct a strip and pat search every time he came from the toilet.

Young girls were also stripped, sometimes forcibly by up to six male officers. Stripping girls included cutting off their clothes. This was used as a behaviour-management tactic or, allegedly, to protect them from self-harming. AN, an Aboriginal girl who gave evidence to the commission, said that she was grabbed and picked up by her shorts and bra straps. She stated that this ‘wedgies method’ was the guards’, including male guards’, ‘preferred way of grabbing me’. For AN, ‘this hurt and was shame job’. On one occasion:

A large group of guards picked me up... and threw me face down... They then used the Hoffman knife to cut off all my clothes including my bra and underwear.

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I was fully naked and I felt real shame with all those men in the room... That was one of my worst experiences in detention. I still think about this and it upsets me.

For these reasons, AN described her experience in detention as contributing to a lost youth. She wishes she could live her youth again. Nonetheless, AN's vision for the future is shaped by her love of horses and children and her intention to build on her work experience in childcare. She is hopeful that the commission and her contribution to it may help other children in detention to avoid similar experiences to hers.

Torture: an extension of treatment under the Intervention

The punitive racism pervading the Intervention has seeped into the treatment of Aboriginal children in detention. Pat Anderson, who co-authored the *Little Children Are Sacred* report (with Rex Wild) on strategies for addressing child abuse in the Northern Territory, was aghast that the report, which recommended Aboriginal community-owned solutions, had been used to justify the Intervention's top-down policy of disempowerment. During examination by the commission, she referred to the Intervention as a 'huge betrayal'. The Intervention legitimated an attitude that Aboriginal people can only be dealt with as problematic. Anderson said that cruelty towards children in detention was 'an extension' of the abuse of Indigenous people under the Intervention. It produced a 'general moral decay' that 'has allowed children being put in hoods and restraint chairs'. This is due to the culture among officers and the Northern Territory government's passage of legislation to allow restraints. For Anderson, there is 'no doubt in my mind' that the 'disempowerment' and 'appalling' treatment of Aboriginal people living under the Intervention culminated in the torture of Aboriginal children at Don Dale.

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Following the Intervention, the Royal Commission was told, ad hoc violence against Aboriginal children was amplified. Groups of thugs were employed in youth detention. The commission heard that a 'boys club' had emerged, such as 'Jimmy's boys', under manager James Sizeland. These officers included professional prize fighters and steroid-taking body builders. Experienced officers who refrained from using the brutal tactics of the young and inexperienced 'muscle men' did not get promoted. Officers used their roles as a 'power trip' by randomly bashing children, swearing at them (e.g. 'stupid black cunt' and 'fucking slut'), telling them to eat bird poo, filming them in the shower and on the toilet and uploading footage to social media sites. The evidence of ministers, Corrections managers, and staff in the Corrections complaints investigations unit, revealed that these brutal acts were condoned.

The assimilationist approaches of the Intervention and its related policies were replicated in youth detention. The Intervention measures are directed to removing Aboriginal people from country through reducing funding and services, acquiring Aboriginal land, and making it more difficult to practise culture on country, including by policing ceremonies on sacred sites, diluting bilingual education, abolishing self-governing Aboriginal councils, prescribing the functions of Aboriginal Night Patrols, and taking Aboriginal children out of the care of their families and communities. These policies were implemented with punitive force: if Aboriginal children missed school then their parents' income would be completely state managed; if alcohol was found in a car then the car would be confiscated; and if communities refused to lease their land, their housing needs would not be met.

As on the outside, Aboriginal children experienced assimilationist

treatment in detention. Teachers and a school principal told the commission that the school would prohibit children from speaking in their Aboriginal language in classrooms. Dylan Voller said he also heard officers 'putting [Aboriginal children] down because they can't speak English properly'. The children inside also lost visits from families when they were taken from a remote community to detention, or transferred from Alice Springs to the Don Dale centre in Darwin, which is 1500 kilometres away. They were then tormented by officers who told them that their 'family did not really care' and refused them phone contact. They were also not allowed to attend funerals and sorry business when family passed on. This resulted in dislocation from family, community and country. The effect of moving far away from their community was that the children 'ended up getting more dislocated from their family groups'.

What can be expected from the commission?

The focus of the royal commission thus far has been on reform: making the youth justice system more therapeutic and rehabilitative, providing residential care institutions more positive and 'home-like' for children, and creating better training and operational procedures. This is not transformative but sanitises the status quo in youth detention and child protection. For instance, the CEO of Territory Families stated that children need a better induction process that includes the provision of a 'plain English version of the restraint policy'. The use of restraints for children is normalised in this type of proposal.

What is lost is a discussion about the abolition of youth detention, the cessation of Aboriginal children being taken away from Aboriginal families and communities, and a repealing of the Intervention's current legislative guise in Stronger Futures that has impoverished, alienated and disengaged Aboriginal families. Muriel Bamblett, who is from the Yorta Yorta and Dja Dja Wurrung, explained to the commission that the 'greatest' resource in the Northern Territory comes from the strength of Aboriginal communities and their 'strong cultural base' and laws, which need to be fostered. These discussions require greater engagement with Aboriginal families, which has been lost since the Intervention and is missing from the Royal Commission hearings. **a**